IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.856 of 2007

(In the matter of detenu Juli Sister of the petitioner herein)

Mala .. Petitioner

Vs

1. The Secretary to Govt.
   Home, Prohibition and Excise
   Department
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate
   Kancheepuram District
   Kancheepuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.M.Balaji

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner is the sister of the detenue, Juli, wife of Nagaraj. The detenue was incarcerated by order dated 16.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second

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respondent dated 16.5.2007 in BDFGISSV.No.34/2007 against her sister, who is now confined at Special Prison for Women, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenue before this Court and set her at liberty.

2. According to the respondents, the detenue was found selling illicit arrack on 22.4.2007. The Inspector of Police, Kanchi Taluk Police Station, apprehended the detenue and seized the illicit arrack found therein. The samples were sent for chemical analysis and it was found that the arrack contained 9.3% mg atropine per 100 ml. A case was registered in Crime No.399/2007 under Section 4(1)(i), 4(1-A) and 4(1)(aaa) of the Tamil Nadu Prohibition Act.

3. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases of alike nature and having satisfied that there is a compelling necessity to detain the detenue in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a bootlegger.

4. Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay in considering the representation of the detenue, we do not propose to go into the other aspects, as the said ground of belated consideration of the representation has to succeed. According to the learned counsel, there was a delay in preparing the rejection letter, which vitiates the order of the detention.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 16.5.2007. The detenue has made a representation dated 14.6.2007 to the Government, which was received on 20.6.2007. Remarks were called for from the detaining authority on 21.6.2007. The detaining authority in turn called for parawar remarks from the sponsoring authority on 21.6.2007, which was received by the detaining authority on 22.6.2007. A report was sent to the Government on 22.6.2007 itself, which was received on 25.6.2007. The file was circulated on 25.6.2007 itself. The Under Secretary and the Additional Secretary dealt with the file on 26.6.2007. The Minister concerned ultimately rejected the representation on 28.6.2007. It is contended that even though the representation was rejected by the Minister concerned on 28.6.2007, the rejection letter was prepared only on 5.7.2007 with a delay of seven days and in the absence of convincing reply on behalf of the State, the order

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of detention vitiates. We find some force in the contention of the learned counsel. Even excluding the intervening public holidays viz., 30.6.2007, 1.7.2007 (Saturday and Sunday), there was a delay of five days in preparing the rejection letter by the Government.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, admittedly, there is a delay of five days in preparing the rejection letter by the Government and in the absence of valid explanation for the said delay, in our considered opinion, the same vitiates the order of detention. We are, therefore, inclined to allow this petition. Accordingly, the order of detention dated 16.5.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

ATR

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Govt.,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and
     District Magistrate
   Kancheepuram District
   Kancheepuram.

3. The Superintendent
   Special Prison for women
   Puzhal, Chennai.

4. The Joint Secretary
  to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor,
   High Court, Madras.

+ 1 cc to mr. K. M. Balaji, Advocate SR No. 61883

NTK(CO)
SR/9.10.2007

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